and family allowance to be paid for children outside Australia - although there are major problems in obtaining these extra payments because the person may not be able to show that he or she has 'custody, care and control' of the child - see *Hung Manh Ta* (above) and *Al Halidi* (in this issue of the *Reporter*).

Under the present Act, extra pension and family allowance can be paid if the person intends to bring the child to Australia as soon as reasonably practicable; and the family allowance or extra pension cuts out if the child is not brought to Australia within 4 years of the first payment of that extra pension or benefit. The amending legislation will change these rules: the 4 year period will run, not from the first payment of family allowance or extra pension, but from the time when the person was first in Australia and her or his dependent child was outside Australia; and eligibility for the extra payment will depend, not on the person's intention to bring the child to Australia, but on the Secretary's assessment that 'it is likely that the person will bring the child to live in Australia' within the 4 year period.

[The DSS has made the following comment on this change (a comment which is a little misleading in view of the AAT decisions referred to above):

> 'In the main case to which the "4 year" rule is intended to apply, i.e. immigrants to Australia who leave their children temporarily in their native country, the result would be that these children will be capable of being regarded as dependent children during the first 4 years after the arrival in Australia of the immigrant, but not thereafter.'

The difficulty is that, according to the AAT, a child overseas cannot be regarded as in the 'custody, care and control' of their parent in Australia; and the somewhat expanded concept of 'dependent child' in the amending legislation does nothing to overcome that difficulty. It is, to say the least, unfortunate that the Government has not taken the opportunity (when drafting this amending legislation) to correct the difficulty highlighted by the AAT. The AAT invited the Government to take that action in *Al Halidi* (in para. 17 of the Reasons):

> 'If in fact the interpretation of the phrase custody care and control applied in *Re Hung Manh Ta* and this decision is more strict than Parliament intends, the legislation perhaps will be amended to clarify the concept of custody care and control where the child is outside Australia but the parent claiming pension or allowance is in Australia.'

The amendments proposed by the amending legislation (particularly the broadening of the concept of 'custody, care and control') ignore this invitation; and do nothing to alleviate the problem highlighted by the AAT.] **P.H.**

Statistics

	Feb. 85	Mar. 85	Apr. 85	May 85
Applications lodged*	29	32	45	44
Decided by AAT	13	18	22	15
Withdrawn	19	15	7	12
Conceded	26	20	8	20
No jurisdiction	3	4	5	1
Lapsed	0	11	3	0
Awaiting decision at end of month	725	690	690	686
***Applications lodged: type of appeal**				
Unemployment B	5	3	5	5
Sickness B	2	1	4	2
Special B	1	0	1	0
Age Pension	3	4	3	1
Invalid Pension	11	13	20	16
Widow's Pension	2	3	2	3
Supp. Parent's B	1	0	0	2
HCA	2	3	3	7
Family Allow.	0	2	2	4
FOI	1	1	2	2
Other	1	2	3	2
State where application lodged				
ACT	0	3	0	1
NSW	15	11	8	11
NT	0	3	0	0
Qld	3	6	13	2
SA	3	1	3	7
Tas.	0	1	3	0
Vic.	1	2	14	11
WA	7	5	4	12

Long term trends

In the first 5 years of the AAT's social security jurisdiction (1 April 1980 to 31 March 1985), there have been 3666 applications for review of social security decisions. Of these, 2301 were medical (invalid pension, sickness benefit and handicapped child's allowance) and 1365 were non-medical.

As we pointed out in 19 *SSR* 208, the rate of new appeals reached a peak in May 1983 (when there were 121 new appeals), and has been steadily declining since then. (In the first 3 months of 1985, only 85 new appeals were lodged.)

A major factor in the decline in appeals has been the reduced number of medical appeals - down from a high of 818 in 1983 to 299 in 1984 (and 30 in the first 3 months of 1985). Generally, the number of non-medical appeals has remained steady at around 30 a month, apart from March 1985 when there were only 5.

New South Wales and Victoria continue to dominate the AAT's caseload, as this table shows:

ACT	26
NT	8
WA	214
Tas.	120
SA	267
Qld	534
NSW	1350
Vic.	1133
Total	**3666**

Although social security's share of the AAT caseload has shrunk from 36% to 30%, it still constitutes by far the largest single category of appeals (FOI, with 21%, is the next largest). (Overall, the number of appeals to the AAT (i.e. in all its jurisdictions) has fallen from 506 in January-March 1984 to 391 in January-March 1985.)

The decline in social security appeals may only be a temporary phenomenon: 'This trend,' the Administrative Review Council has observed, 'will no doubt be reversed when appeals against valuations made under the *Social Security and Repatriation (Assets Test and Budget Measures) Act* 1984 eventually come before the AAT.'*

The AAT has reported that, over the last 5 years, 3243 appeals have been 'determined'. In 152 cases, the AAT had no jurisdiction; the DSS conceded 1252 appeals (500 of these concessions were made in 1984); and 794 appeals were withdrawn by applicants. The AAT adjourned a further 179 appeals indefinitely. The remaining 866 appeals were decided by the Tribunal as follows:

affirmed	402
set aside	445
varied	19

1984 was a particularly busy year for the AAT - it decided 342 social security appeals (compared with 251 in 1983). And it was a particularly successful year for applicants, who won 222 (65%) of the appeals decided by the AAT (apart from the 500 appeals conceded by the DSS in 1984).

As at 26 March 1984, there were 423 appeals awaiting decision (compared with 1021 a year earlier). Of these, 58 had been heard and were awaiting decision, 1 was part-heard, and 226 had been listed for hearing.